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UMASS/AMHERST



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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

JUNE 26, 1986 ✓
SUPERIOR COURT
CIVIL ACTION
NO. 80109

MASSACHUSETTS COALITION FOR THE HOMELESS,
and, MASSACHUSETTS COALITION FOR BASIC HUMAN NEEDS,
and CELESTE FREEMAN, KATHY GOODWIN, and CANDY HEYSER
on behalf of themselves, their minor children, and
all others similarly situated,

GOVERNMENT DOCUMENTS
COLLECTION

Plaintiffs

APR 7 1987

vs.

University of Massachusetts
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MICHAEL S. DUKAKIS, GOVERNOR
PHILIP W. JOHNSTON, SECRETARY, EXECUTIVE OFFICE
OF HUMAN SERVICES, and CHARLES M. ATKINS, COMMISSIONER,
DEPARTMENT OF PUBLIC WELFARE,

Defendants

FINDINGS RULING AND ORDER

1. GENERAL BACKGROUND

This action was brought by the plaintiffs to force an increase in A.F.D.C. benefits, which they believe the Department of Public Welfare is statutorily obliged to pay pursuant to G. L. c. 118, § 2. The part of the statute which the plaintiffs' claim is being violated requires that, "the aid furnished shall be sufficient to enable such parent to bring up such child or children properly in his or her own home, and shall be in an amount to be determined in accordance with budgetary standards of the department...". In support of their contention, the plaintiffs have entered into the record hundreds of pages of affidavits attesting to the fact that



there are a large number of citizens of the Commonwealth who are financially unable to raise their children in their own homes and, as a result, are currently living in emergency shelters or under even less habitable conditions.

The plaintiffs seek broad relief from this court. First, (1) they wish this court to declare as a matter of law that the current levels of A.F.D.C. benefits violates G. L. c. 118, § 2, and that the Department of Public Welfare has the duty pursuant to G. L. c. 18, §2(B)(g) to annually review the adequacy of the A.F.D.C. standards in light of the costs of housing A.F.D.C. families in their own homes, and to inform the Executive Office of Human Services and the Governor's Office of the results of such review. Second, (2) they wish an affirmative preliminary injunction to be issued against the Commissioner of the Department of Public Welfare ordering him to promulgate revised standards of assistance in compliance with the relevant portions of G. L. c. 118, § 2. Third, (3) the plaintiffs request this court to issue affirmative preliminary injunctions against the Commissioner of the Department of Public Welfare, the Secretary of the Executive Office of Human Services and the Governor, requiring them to pay A.F.D.C. benefits based on the new standards that will be issued by the Commissioner of the Department of Public Welfare.

The defendants argue that interpretation of the statute aside, the relief sought by the plaintiffs is beyond the scope of the power of this court. It is claimed that the doctrine of



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sovereign immunity shields all the defendants from suit by private citizens. Furthermore, the defendants argue that even if this court has jurisdiction over the parties, the subject matter of this case is governed by mandamus principles which restricts relief to extreme cases which have been finally adjudicated. Finally, the parties in opposition claim that the doctrine of separation of powers forbids the judiciary from inquiring into matters which involve the appropriation of money by the Commonwealth.

II. JURISDICTION GENERALLY

With respect to the Commissioner of the Department of Public Welfare and the Secretary of the Executive Office of Human Services, this court strongly disagrees with the assertion that they can not be brought into court in the present case. G. L. c. 231A, § 2, specifically states that "said procedure under section one may be used in the Superior Court to enjoin and to obtain a determination of the legality of the administrative practices and procedures...of any official in which practices or procedures are alleged to be in violation of the...laws of the Commonwealth". Moreover, clear precedent has established this right with respect to both parties. Wolf v. Commissioner of Public Welfare, 367 Mass. 293 (1973); ABCD v. Commissioner of Public Welfare, 367 Mass. 327 (1979); Mary Moe and Others v. Secretary of Administration and Finance, 382 Mass. 629 (1981). ABCD and Wolf, in fact, were both cases involving the AFDC program.

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III. JURISDICTION OVER THE GOVERNOR

The issues are more complicated with respect to the Governor's presence as a party. The "ancient" case of Rice v. the Governor, 207 Mass. 577 (1911), has long stood for the proposition that the Governor, as the Executive of the Commonwealth, should not be made a party to litigation because of the separation of powers issues which would be raised by such an occurrence. Furthermore, the Governor was specifically exempted from G. L. c. 231A, § 2. The plaintiffs point out that there is precedent establishing the rights of parties to sue the Governor in cases involving claims arising under the Civil Rights Acts and the United States Constitution. The parties in the present case, however; make no such claim. Moreover, Rice has never been overturned by the Supreme Judicial Court and, therefore, it still stands as the law in the Commonwealth. Therefore, the Governor will be dropped as a party to this action.

IV. COURT'S INJUNCTIVE POWERS

The Massachusetts Rules of Civil Procedure and recent case law strongly contradict the ^{Δ's} plaintiffs' claim that mandamus principles should apply in the present case. Attorney General v. Sheriff of Suffolk County & Others, 394 Mass. 624 (1985); Armando Perez & Others v. Boston Housing Authority & Others, 397 Mass. 679 (1979); Blaney & Others v. Commissioner of Correction & Another, 374 Mass. 337 (1977). In 1974 when the M.R.C.P. were adopted, a provision abolishing the writ of mandamus was expressly included in Rule 81(b). It is still

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and development. It begins with the first settlers who came to the continent in search of a new home. These settlers found a land of vast resources and opportunities, but they also found a land that was already inhabited by a diverse and rich culture of Native Americans. The story of the United States is a story of the struggle for independence, the fight for equality, and the pursuit of a better life for all. It is a story of the triumph of the human spirit over adversity and the power of unity in the face of challenge. The history of the United States is a story that continues to unfold, and it is a story that we all have a part to play in shaping its future.

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part of the Rules in 1986. Therefore, this court refuses to accept the defendants claim that the North Carolina case of Board Manager v. Wilmington, 235 N.C. 597, 70 S.E. 2d 833 (1953), should govern the present action not withstanding its solely advisory status in the first place.

Temporary or preliminary relief has been granted in many cases involving social welfare programs and public assistance benefits, even where substantial expenditure of public funds was at issue. See, e.g., Rosado v. Wyman, 397, 90 S. Ct. 1207 (1970) (Welfare recipients challenged the legality of a New York statute concerning payment amounts, Rosado v. Wyman, 304 F. Supp. 1355 (1969), and the Supreme Court later affirmed the injunction based on their interpretation of the federal A.F.D.C. statute); Moreno v. United States Department of Agriculture, 345 F. Supp. 310 (D.D.C. 1972) aff'd., 413 U.S. 508 (1973) (nationwide restraining order issued to prohibit the denial of Food Stamp benefits to unrelated households); Coalition for Basic Needs v. King, 654 F.2d, 838 (1st Cir. 1981) (Governor ordered to issue A.F.D.C. checks despite lack of appropriation); Lynch v. King, 550 F. Supp. 325 (D. Mass. 1982) (preliminary injunction was issued to require the Massachusetts Department of Social Services to provide each foster child with a case plan and to provide periodic review of each child's case).

V. SEPARATION OF POWERS

This Court is not prevented by article 30 of the Declaration of Rights from inquiring into whether particular government officials have complied with the mandate of G. L.

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c. 118, § 2. In Moe v. Secretary of Administration and Finance, 382 Mass. 629, 642 (1980), the Supreme Judicial Court categorically rejected the defendants argument that the doctrine of the separation of powers prevents judicial inquiry to matters involving the appropriation of funds by officials or agencies of the Commonwealth:

"More fundamentally, we have never embraced the proposition that merely because a legislative action involves an exercise of the appropriations power, it is on that account immunized against judicial review. In Colorado v. Treasurer & Receiver General, 378 Mass. 550, 552-553 (1979), we rejected the argument that either the doctrine of separation of powers or the political question doctrine requires that result."

The case of Perez v. Boston Housing Authority, 379 Mass. 703 (1980), is still instructive. In that instance, the Boston Housing Court placed the Boston Housing Authority under receivership, primarily for its failure to manage residential housing in conformity with the sanitary code. It was argued by the defendant in that case, that receivership was tantamount to removal of the members for cause and, therefore, was in violation of the applicable statute and the separation of powers. In that case, the Supreme Judicial Court soundly rejected this line of argument:

"But if it is a function of the judicial branch to provide remedies for violations of law, including violations committed by the executive branch, then an injunction with that intent does not derogate from the separation of principle...To the contrary, when the executive persists in indifference to, or neglect or disobedience of court orders...it is the executive that could more properly be charged with contemning the separation of principle." Perez, 379 Mass. at 739-740.

VI. Statutory Construction

Therefore, the main issue to be decided by this court is whether the current level of A.F.D.C. benefits violates the rights of current recipients as delineated by G.L. c. 118, § 1, which says in relevant part: "the aid furnished shall be sufficient to enable such parent to bring up such child or children properly in his or her own home, and shall be in an amount to be determined in accordance with budgetary standards of the department..."

The general rule reading statutes which were promulgated to aid the poor is that, where there is doubt they are to be interpreted in favor of the recipients. Worcester v. Quinn, 304 Mass. 276, 278 (1939); Attorney General v. Board of Public Welfare of Northampton, 313 Mass. 675. Sutherland and Sand's Statutory Construction, 4th edition, § 71.08, comments:

"The care of the state for its dependent classes is considered by all enlightened people as a measure of its civilization, and provisions for the proper care and treatment at public expense of the indigent, sick, and those who for other reasons, are unable to take care of themselves, is said to be among the unquestioned objects of public duty.' Therefore, statutes enacted in fulfillment of this recognized public obligation should at all times be liberally interpreted so that the undesirable social effects resulting from the neglect of the poor may be eliminated."

Other state courts have held that the words of state statutes relating to benefit levels must be given precise meaning, and have ordered welfare departments to set standards

and pay benefits accordingly. In State ex. rel. Ventrone v. Birkel, 54 Ohio St. 2d, 461 (1978), the Ohio Supreme Court ruled that the amount of General Relief assistance set forth by a county resolution failed to adequately satisfy the statutory requirement that poor relief "shall be sufficient to maintain health and decency..." and affirmed a writ of mandate ordering the county welfare department to pay benefits in accordance with the statute. Similarly, the Hawaii Supreme Court held that a state statute which placed a ceiling on the level of general relief benefits a person might receive, but defined that ceiling as the minimum "compatible with decency and health", must be enforced in a manner which gave meaning to the "compatible with decency and health" language in terms of actual need and cost. Keller v. Thompson, 532 P. 2d 644 (Hawaii, 1975). See also, Clark v. Department of Health and Welfare, 315 A.2d 187 (N.H. 1974); Ivy v. Montgomery, No. 592705 (Cal. Superior Ct., 1969), aff'd No. 27758 (Cal. App. 1975).

There is no case law which clearly defines the meaning of the words used in G. L. c. 118, § 1. The case of Town of Cohasset v. Town of Scituate, 309 Mass. 403 (1941), does, however; offer some guidance to historical usage and legislative intent. In that case, the court distinguished between G. L. c. 118, § 1 and G. L. c. 117, § 14, which stated that "boards of public welfare in their respective towns shall provide for immediate comfort and relief of all persons residing or found therein, having lawful settlements in other

towns, in distress and standing in immediate relief, until removed to the towns of their lawful settlements". The court in Cohasset, 309 Mass. 405, commented:

"We are of the opinion that it [G. L. c. 118, § 1] was intended that parents, so called, with dependent children, were to be aided and dealt with in a manner quite different from that under c. 117. It is not a mere question of food, shelters and necessities to a needy family. There is a manifest purpose to preserve the unity of the family, and to have needy children brought up in homes or their own by relatives under circumstances quite different from what would be possible, or was even thought of, under [G. L. c. 117]. The intent of the Legislature appeared to be to establish a mechanism by which dependent children may receive a type of public aid different in scope from and more substantial than that afforded by [G.L.] c. 117, and without the necessity of accepting general welfare, so called."

This language is quite significant because it lends support to the contentions of the present plaintiffs that they are entitled under G. L. c. 118, § 1 to more of a home life than can be afforded by emergency shelters. Temporary housing and survival appears to be the kind of relief that was contemplated by G. L. c. 117, § 14. The purpose of enacting G. L. c. 118, § 2 seems to have been to provide a more permanent solution.

An Attorney General's Opinion rendered shortly after enactment confirms this intent:

[T]he primary purpose of the 1913 Act seems to be to provide for the care of young children by their mothers "in their own homes". There are minute provisions for the inspection of these homes and investigation as to the kind of bringing up which the children would be likely to receive therein. 4 Op. A.G. (Mass.) 568, 570-71. (1916).

This reading of G. L. c. 118, § 2 was reiterated recently by the Supreme Judicial Court in Civetti v. Commissioner of Public Welfare, 392 Mass. 474 (1984):

"The purpose of the A.F.D.C. program is to enable children, one or both of whose parents are absent or unable to provide support, to continue living at home through the provision of funds for their shelter, food, and other necessary items." (emphasis added).

Ironically, the defendants rely on Civetti, a case which expanded the eligibility of the A.F.D.C. program, for the proposition that G. L. c. 118, § 2 does not require that A.F.D.C. benefits "be sufficient to enable [a parent] to bring up [a] child...properly in his or her own home". This mistaken impression is based on the fact that the Supreme Judicial Court found that parents who entered into voluntary agreements with the DPW to have their children placed in residential schools were still eligible for A.F.D.C. benefits. Civetti dealt with the question of when a child was deemed living at home for the purposes of G. L. c. 118, § 2. The Supreme Judicial Court found that when a child has alternative, suitable accommodations such as residential schools or in other relatives' homes, the child is being raised in a way that is in congruence with the purpose of the original legislation. If the defendants are arguing that Civetti stands for the proposition that raising children in emergency shelters or in motels, is also within the spirit of G. L. c. 118, § 2, this court adamantly disagrees.

In analyzing the adequacy of A.F.D.C. benefits, this court relied primarily on information provided by the

Department of Public Welfare. It is important to note, however, that the plaintiffs in this case claim that most of the statistical data provided by the DPW underrepresents the true scope of the problems A.F.D.C. recipients encounter in trying to survive in the Commonwealth.

With this in mind, the living conditions of those currently receiving A.F.D.C. benefits can be evaluated. One of the best summaries comes from the Department of Public Welfare itself, which stated in its Budget Narrative for FY 1987 at 96:

"Most A.F.D.C. families do not have an adequate income to compete successfully for housing in the tight private housing market. Currently, the median rent of housing units in Boston of \$530 is above the entire \$432 monthly grant for an A.F.D.C. family of 3. As a result, families devote a disproportionate share of their income to housing, scrimping on other necessities such as food and clothing. Currently, A.F.D.C. recipients spend 70% of their A.F.D.C. grant on fuel and housing, leaving the remaining 30% to cover all other expenditures. Often this level of housing expenditures cannot be maintained and families become homeless..."

It is difficult to know how many A.F.D.C. families are currently homeless, but again the Department of Public Welfare's 1987 Budget Narrative is instructive:

"The 1985 Massachusetts Report on Homelessness from the Executive Office of Human Services estimated that there are 8,000 to 10,000 homeless persons statewide. Figures from the 1985 Boston Emergency Shelter Commission's Plan for Boston's Homeless, however, indicate that there are 9,800 homeless men, women and children in Boston alone. There is ample evidence that homelessness is increasing. ...

"Historically, the homeless population consisted largely of "street people,... However, the 1985 EOHS Report of Homelessness indicates that families now constitute a substantial proportion of the Massachusetts homeless population. These families, typically a mother and her children, make up a portion of the homeless population that is continuing to grow rapidly. ... Homeless families are frequently recipients of A.F.D.C."

The psychological effects of homelessness were summed up in the affidavit of Dr. Mathew P. Dumont:

"The fear of losing one's home, of being "on the streets", as expressed by many of my patients, is not merely the threat of exposure to the elements. ... What gives the experience its particular horror, particularly among mothers of young children is a whole ecology of stressful realities. At some deep and central level of our emotional lives we all carry a sense of dread that we will someday be alone and abandoned in the world, like atoms in the void. The heartrending cry of a child momentarily lost in a downtown crowd is the expression of that dread. And, later in the essence of the fear of death is the same sense of isolation, of being cut off, alone in the universe. ... The existence of a "home", an address, a place where someone we know can always be found, where we belong, is the only source of solace for that universal dread. Every homeless mother and child carries within them empty space where the solace can be found in the rest of us. It affects the ways they will deal with the subsequent experience, giving the anxieties that most of us carry with us a whole new dimension of depth." (footnote: Dumont Affidavit, Ex. 5 at 5-6, para. 13-14).

The plaintiffs claim in their affidavits that the current level of A.F.D.C. benefits combined with food stamps is 40% below the federal poverty line. The defendants claim that the combined benefits are about 18% below the federal poverty line. Affidavit of Mathew Fishman at Paragraph 14. This court notes that in 1973 A.F.D.C. benefits were 15% greater than the federal poverty line. Id. Significantly, this court recognizes that in his deposition, Mathew W. Fishman, Assistant Commissioner for Budget Control at the Department of Public Welfare, admitted that the 1987 budget request of the Governor, "would not meet their [(people for whom A.F.D.C. is the only income)] minimum subsistence needs." Deposition of Mathew W. Fishman, p. 2-17. This court neither has the duty nor the expertise to say what dollar amount would enable "[a] parent to bring up such a child or children properly in his or her own home", but based on the affidavits of the plaintiffs and the admissions of the defendants themselves, this court can say, as a matter of law, that the current level is inadequate to conform to the statutory mandate of G. L. c. 118, § 1.

"The Department of [Public Welfare] has not established a single figure for internal or public use, which indicates how much it would cost for a family to live or subsist in Boston in private housing." Deposition of Mathew W. Fishman, p. 2-16. Yet, G.L. c. 18, §2(B)(g) requires the Department of Public Welfare to "formulate a standard budget of assistance, the adequacy of which shall be reviewed annually." In light of the

wording of G. L. c. 118, § 2 , this court finds the Commissioner of the Department of Public Welfare to be in violation of his statutory duty.

VII. RULINGS AND ORDERS

1) For the reasons stated supra, this court has jurisdiction over the Commissioner of the Department of Public Welfare and the Secretary of the Executive Office of Human Services.

2) For the reasons stated above, this court does not have jurisdiction over the Governor and he is dismissed as a party.

3) For the reasons discussed above, this court does have the power to grant the requested relief.

4) For the reasons stated supra, this action does not violate the doctrine of separation of powers.

5) The Department of Public Welfare has not determined a level of assistance based on the actual cost of living in the Commonwealth. On a yearly basis it has adopted the Legislature's appropriation as its standard for purposes of providing A.F.D.C. benefits.

6) This court declares as a matter of law that the current level of A.F.D.C. benefits fails to meet the mandate of G. L. c. 118, § 2, which states that "the aid furnished shall be sufficient to enable such parent to bring up such child or children properly in his or her own home".

